

## KNOW YOUR RIGHTS: PROTECTION FROM VIOLENCE IN PRISONS AND JAILS

**Basics:** The Constitution “does not mandate comfortable prisons,” but neither does it permit inhumane ones.<sup>1</sup> In its prohibition of “cruel and unusual punishments,” the Eighth Amendment to the United States Constitution imposes duties on prison officials who must ensure that people in prison receive “adequate food, clothing, shelter, and medical care” and must take reasonable measures to guarantee prisoners’ safety.<sup>2</sup>

**The Legal Standard:** The Eighth Amendment imposes a duty on prison officials to “protect prisoners from violence at the hands of other prisoners.”<sup>3</sup> To demonstrate that prison officials violated their duty to protect prisoners from violence, a plaintiff must show that: (1) he is incarcerated under conditions imposing a substantial risk of serious harm; (2) prison officials have had knowledge of and been indifferent to that risk; and (3) the prison officials’ indifference to the conditions caused the risk of serious harm to the prisoner.<sup>4</sup>

1. **A Substantial Risk of Serious Harm from Assault:** To meet the objective component of the Eighth Amendment test, a prisoner must show that he is “incarcerated under conditions posing a substantial risk of serious harm.”<sup>5</sup> A prisoner may meet this test by showing that he is/was at risk of harm due to a threat from a specific prisoner,<sup>6</sup> or he can show that the risk stemmed from generalized conditions of dangerousness.<sup>7</sup> In *Hale v. Tallapoosa County*, 50 F.3d 1579, 1583 (11th Cir. 1995), for example, the Eleventh Circuit Court of Appeals found a serious risk of harm where prisoner violence “require[d] medical attention and even hospitalization on occasion.” In *Marsh v. Butler County*, 268 F.3d 1014, 1033, n.12, 1034 (11th Cir. 2001), a serious risk of harm existed where two prisoners were injured, even in the absence of numerous previous assaults. In *Gates v. Collier*, 501 F.2d 1291, 1308-09 (5th Cir. 1974), plaintiffs were subject to a serious risk of harm where they proffered evidence of 27 assaults with weapons. In *LaMarca v. Turner*, 995 F.2d 1526, 1533 (11th Cir. 1993), a serious risk of assault was established

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<sup>1</sup> *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 833.

<sup>4</sup> *Id.*; *Hale v. Tallapoosa County*, 50 F.3d 1579, 1582 (11th Cir. 1995).

<sup>5</sup> *Farmer*, 511 U.S. at 834.

<sup>6</sup> *Id.* at 843 (“[I]t does not matter whether the risk comes from a single source or multiple sources. . .”).

<sup>7</sup> *LaMarca v. Turner*, 995 F.2d 1526, 1535 (11th Cir. 1993) (explaining that “unjustified constant and unreasonable exposure to violence” violates Eighth Amendment); *Krein v. Norris*, 309 F.3d 487, 489-90 (8th Cir. 2002) (denying summary judgment to defendants where: (1) one officer supervised three barracks housing 150 men, (2) the level of violence in the dorm in question was five times higher than other dorms, (3) the defendants failed to keep track of the number and locations of assaults).

where plaintiffs presented evidence of four rapes, one attempted rape, one assault, and one stabbing.<sup>8</sup>

2. **Deliberate Indifference:** Deliberate indifference is much more difficult to prove than negligence. Under the deliberate indifference standard, you must show that a prison official actually *knew* you were at risk of harm, and did not respond reasonably. You can prove that the official knew about the risk by showing that you told him/her about it. Or, you can show that conditions at the facility were generally dangerous. Prison officials have knowledge of an unacceptably dangerous prison environment if a “substantial risk of inmate attacks” was “longstanding, pervasive, well-documented, or expressly noted by prison officials in the past.”<sup>9</sup> In determining whether a prison official has been deliberately indifferent to a risk of assault, a court may consider complaints, grievances, and other records referring to the problem.<sup>10</sup> The following factors, alone or in combination, may support a finding of deliberate indifference in prisons with a high rate of violence:<sup>11</sup>

- Overcrowding<sup>12</sup>
- Understaffing<sup>13</sup>
- Ready availability of knives and other weaponry<sup>14</sup>
- Failure to control prisoner movement<sup>15</sup>
- Failure to control contraband<sup>16</sup>

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<sup>8</sup> Compare *Purcell v. Toombs County*, 400 F.3d 1313, 1323, n. 21 (11th Cir. 2005) (finding “the record [was] insufficient to show that serious inmate-on-inmate violence was the norm” where plaintiff offered evidence of three previous fights, only one of which required a trip to the hospital).

<sup>9</sup> *Farmer*, 511 U.S. at 842-43.

<sup>10</sup> *Farrow v. West*, 320 F.3d 1235, 1245 (11th Cir. 2003).

<sup>11</sup> *Laube v. Haley*, 234 F. Supp. 2d 1227, 1245 (M.D. Ala. 2002) (“[I]t is the combination of substantial overcrowding and significantly inadequate supervision in open dorms that deprives inmates of their right to be protected from the constant threat of violence”) (internal quotations omitted).

<sup>12</sup> *Laube*, 234 F. Supp. 2d at 1236 (“The large number of inmates in Tutwiler has increased the risks to inmate safety”).

<sup>13</sup> *Hale*, 30 F.3d at 1581 (only one jailor on duty when prisoner was assaulted); *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (suggesting that inadequate staffing may rise to deliberate indifference to prisoner safety); *Laube*, 234 F.Supp.2d at 1233 (“In an overcrowded open dorm, where weapons are readily available . . . adequate staffing is an absolute necessity.”); *Krein*, 209 F.3d at 498-90 (affirming denial of summary judgment to defendants where prisoners in open barrack facility fatally attacked another prisoner and where barrack was understaffed for a period of several months). *But see Purcell v. Toombs County*, 400 F.3d 1313, 1323, n.18 (11th Cir. 2005) (stating that nothing in the record demonstrated that actual jail staffing level was insufficient and holding “[n]o expert testified that the Jail, given its inmate capacity, was understaffed.”).

<sup>14</sup> *Marsh*, 268 F.3d at 1033, n.12, 1034 (widespread possession of weapons by prisoners was a factor that weighed in favor of finding risk of serious harm); *Gates*, 501 F.2d at 1308 (injuries inflicted with weapons weighed in favor of finding Eighth Amendment violation).

<sup>15</sup> *LaMarca*, 995 F.2d at 1532 (prisoners in general population were able to enter confinement area of prison); *Marsh*, 268 F.3d at 1028 (“[C]onditions in a jail facility that allow prisoners ready access to weapons, fail to provide an ability to lock down inmates, and fail to allow for surveillance of inmates pose a substantial risk of serious harm to inmates.”).

<sup>16</sup> *LaMarca*, 995 F.2d at 1532 (serious risk of harm established where “[i]nmates carried knives and openly used drugs.”).

3. **Causation:** You must show a link between the prison official's action and the harm you suffered or will suffer.

## **SEXUAL ABUSE IN PRISONS AND JAILS**

A study released in August 2010 by the United States Department of Justice's Bureau of Justice Statistics (BJS) estimates that at least 88,500 adults held in U.S. prisons and jails were sexually abused at their current facility in the past year.

Congress recently passed the Prison Rape Elimination Act of 2003 (PREA). PREA calls for the development of national standards addressing prisoner rape, the gathering of nationwide statistics about the problem, the provision of grants to states to combat it, and the creation of a review panel to hold annual public hearings regarding this issue. PREA does not provide the basis for a lawsuit regarding sexual assault in prison.

Eighth Amendment claims brought by survivors of sexual assault in prison are governed by the same legal standards as other kinds of assault, as described above.

## **RELATED MATTERS**

**Statute of Limitations:** In Georgia and Alabama, civil rights claims brought under 42 U.S.C. § 1983 are subject to a 2-year statute of limitations, but violations of state law may have earlier limitations periods and notice requirements.<sup>17</sup>

**Exhaustion of Grievance Procedure:** Under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e), no legal action may be brought "with respect to prison conditions" under section 1983 or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility "until such administrative remedies as are available are exhausted." In other words, if the prison/jail you are in has a grievance process, you must complete the grievance process in a timely manner before filing a lawsuit raising federal claims.

## **Resources:**

- You may request a free copy of *The Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison* by writing to The Center for Constitutional Rights at: Jailhouse Lawyers Handbook c/o The Center for Constitutional Rights, 666 Broadway, 7<sup>th</sup> Floor, New York, NY 10012.
- Just Detention International (JDI) is a human rights organization that works to end sexual abuse in jails and prisons. JDI's Survivor Outreach program can send you a guide for resources in your geographic region. JDI's address is: 3325 Wilshire Blvd. Suite 340, Los Angeles, CA, 90010. You can also call at JDI at 213-384-1400 or visit its website at [www.justdetention.org](http://www.justdetention.org).

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<sup>17</sup> Section 1983 of Title 42 of the United States Code ("42 U.S.C § 1983") is part of the Civil Rights Act of 1871. This provision is the primary means of remedying constitutional violations by state actors. The provision was enacted to prevent post-Civil War racial violence in the Southern states. Section 1983 provides a mechanism for seeking redress for an alleged deprivation of a person's federal constitutional and federal statutory rights by persons acting under color of state law.

**Please Note:** This document focuses on cases from the federal courts in Alabama and Georgia. It provides general information, but is not intended to be an exhaustive summary of the law. In addition, the law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.